

**United States Department of Labor
Employees' Compensation Appeals Board**

C.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Hines, IL, Employer**

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**Docket No. 15-55
Issued: April 8, 2015**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On October 10, 2014 appellant filed a timely appeal from the August 22, 2014 decision of the Office of Workers' Compensation Programs (OWCP), denying her request for reconsideration as it was untimely filed and failed to establish clear evidence of error. The appeal was docketed as No. 15-55. Having reviewed the case record submitted by OWCP, the Board finds that OWCP improperly denied further merit review of appellant's case.

OWCP accepted appellant's claim for sprain of the back, lumbar region, right, and lumbosacral spondylosis without myelopathy. In a decision dated July 5, 2013, it found that she had not met her burden of proof to establish permanent impairment. On July 9, 2014 appellant again requested a schedule award and submitted medical evidence utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*) which supported permanent impairment. In an August 22, 2014 decision, OWCP found that the request was untimely filed and failed to present clear evidence of error. It did not review the medical evidence.

The Board has held that where a claimant submits medical evidence regarding a permanent impairment at a date subsequent to a prior schedule award decision, he or she is

entitled to a merit decision on the medical evidence.¹ In the present appeal, appellant submitted new medical evidence supporting impairment after OWCP's July 5, 2013 decision denying her claim for a schedule award. Moreover, it contained an impairment rating that referenced the A.M.A., *Guides*. It is evident from the record that appellant was not seeking reconsideration of the July 5, 2013 OWCP decision, but was seeking a schedule award based on new medical evidence.

The case will be remanded for further development on the issue of whether appellant has a permanent impairment due to her accepted conditions. After this and any other appropriate development, OWCP shall issue a *de novo* decision on her claim.

IT IS HEREBY ORDERED THAT the August 22, 2014 decision of the Office of Workers' Compensation Programs be set aside, and the case is remanded for further development consistent with this order.

Issued: April 8, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹ See *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994); see also *B.K.*, 59 ECAB 228 (2007) (where it was evident that the claimant was seeking a schedule award based on new and current medical evidence, OWCP should have issued a merit decision on the schedule award claim rather than adjudicate an application for reconsideration).